

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

ANGELITA SANDERS,

Plaintiff,

v.

J.C. PENNEY CORPORATION, INC.,

Defendant

Civil Action
File No.:

ANSWER AND DEFENSES

COMES NOW, Defendant J.C. Penney Corporation, Inc., named Defendant in the above styled action, and files the following Defenses and Answer to Plaintiff's Complaint and shows the Court as follows:

FIRST DEFENSE

The Complaint fails to set forth a claim against this Defendant upon which relief can be granted.

SECOND DEFENSE

For a Second Defense, the Defendant answers the numbered paragraphs of the Complaint as follows:

I. PARTIES, JURISDICTION and VENUE

1.

Defendant is without information or knowledge sufficient to form a belief as to the truthfulness of the allegations set forth in Paragraph 1 of the Plaintiff's Complaint.

2.

Defendant admits its registered agent is Corporation Process Company, and its registered agent's address is located in Gwinnett County at 2180 Satellite Blvd, Suite 400, Duluth, Georgia 30097.

3.

The allegations contained in Paragraph 3 of Plaintiff's Complaint are admitted.

4.

The allegations contained in Paragraph 4 of Plaintiff's Complaint are denied as they relate to the State Court of Chatham County.

II. GENERAL ALLEGATION

5.

Defendant admits that it operates a store located at the Oglethorpe Mall, Savannah, Georgia and it believes that Plaintiff visited its store on October 1, 2010.

6.

The allegations contained in Paragraph 6 of Plaintiff's Complaint are denied.

7.

The allegations contained in Paragraph 7 of Plaintiff's Complaint are denied.

III. CAUSES OF ACTION

NEGLIGENCE

8.

Defendant admits that it has certain duties under Georgia law as it pertains to maintaining its premises. Defendant denies a breach of any such duty.

9.

The allegations contained in Paragraph 9 of Plaintiff's Complaint are denied.

10.

The allegations contained in Paragraph 10 of Plaintiff's Complaint are denied.

11.

The allegations contained in Paragraph 11 of Plaintiff's Complaint are denied.

PREMISES LIABILITY

12.

Defendant admits that it has certain duties under Georgia law as it pertains to maintaining its premises. Defendant denies a breach of any such duty.

13.

Defendant admits that it has certain duties under Georgia law as it pertains to maintaining its premises. Defendant denies a breach of any such duty and does not have any knowledge as to the purpose of Plaintiff's visit to its store.

14.

The allegations contained in Paragraph 14 of Plaintiff's Complaint are denied.

15.

The allegations contained in Paragraph 15 of Plaintiff's Complaint are denied as pled.

IV. DAMAGES

16.

The allegations contained in Paragraph 16 of Plaintiff's Complaint are denied.

17.

The allegations contained in Paragraph 17 of Plaintiff's Complaint are denied.

18.

The allegations contained in Paragraph 18 of Plaintiff's Complaint are denied.

THIRD DEFENSE

Any allegation of the Complaint not admitted, denied or otherwise responded to is hereby denied.

FOURTH DEFENSE

Defendant is not liable to Plaintiff because Defendant breached no duty owed in regard to the occurrence giving rise to this Complaint.

FIFTH DEFENSE

Defendant shows that the alleged damages of Plaintiff, if any, were caused by the contributory and comparative negligence of Plaintiff.

SIXTH DEFENSE

Plaintiff, by the exercise of ordinary care, could have avoided the consequences of any act or failure to act of Defendant.

SEVENTH DEFENSE

Defendant is not liable to Plaintiff because the negligence of Plaintiff equaled or preponderated over any acts or omissions of Defendant in producing or in bringing about the occurrence complained of, but Defendant denies that any act of Defendant produced, brought about, caused, or contributed to in any manner whatsoever the occurrence complained of in the Complaint.

EIGHTH DEFENSE

Defendant is not liable to Plaintiff because if Plaintiff sustained any injuries and damages as a result of the occurrence complained of, such were caused by a legal accident.

NINTH DEFENSE

Defendant had no notice of any alleged deficiency on its premises.

ELEVENTH DEFENSE

The Plaintiff's failure to properly plead items of special damages sought in this action prohibits and/or bars Plaintiff's rights to recover and/or recoup any items of special damages in this action, as a matter of law. O.C.G.A. § 9-11-9(g).

TWELTH DEFENSE

No alleged breach of duty by Defendant was the proximate cause of any damages to Plaintiff.

THIRTEENTH DEFENSE AND/OR COUNTERCLAIM

In the event that any benefits have been paid by or on behalf of Defendant, Defendant is entitled to a set off against any verdict for the amount of benefits paid. See, *Orndorff v. Brown*, 197 Ga. App. 591 (1990).

WHEREFORE, having fully answered, Defendant prays that the Complaint be dismissed with costs of this action cast against the Plaintiff.

This 18th day of August, 2011.

[SIGNATURE ON FOLLOWING PAGE]

GOODMAN MCGUFFEY LINDSEY & JOHNSON, LLP
Attorneys for J.C. Penney Corporation, Inc.

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CERTIFICATE OF COMPLIANCE

The foregoing ANSWER AND DEFENSES document is double spaced in 14 point Times New Roman font and complies with the type-volume limitation set forth in Local Rule 7.1.

s/JOSHUA S. STEIN

Joshua S. Stein

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CERTIFICATE OF SERVICE

This is to certify that I electronically filed this ANSWER AND DEFENSES with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to the following attorneys of record:

Brent J. Savage, Esq.
Brent Jamieson Savage, Jr., Esq.
Savage, Turner, Kraueter, Pinckney & Madison
P.O. Box 10600
Savannah, GA 31412

I also hereby certify that I have mailed by United States Postal Service to the attorneys listed above the document that is named in this Certificate of Service.

This 18th day of August, 2011.

GOODMAN MCGUFFEY LINDSEY & JOHNSON, LLP

BY: *S/ JOSHUA S. STEIN*
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Doc ID #1481806